

Letter of Findings Number: 02-20130602P
Tax Administration
For Tax Years 2007-2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana retail business. The Indiana Department of Revenue ("Department") determined that Taxpayer had not filed Indiana adjusted gross income tax returns for the tax years 2007, 2008, 2009, 2010, 2011, and 2012 and so imposed penalties for those years. Taxpayer protested the imposition of the penalties. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

The Department issued proposed assessments for penalties due to Taxpayer's failure to file Indiana adjusted gross income tax returns for the tax years 2007-2012. Taxpayer protests the imposition of penalties for the years 2008-2012 and requests a waiver of those penalties. Taxpayer states that it filed the returns for those years as soon as it realized that there was a filing requirement. Because of this self-reporting and because there was no income to report for those years, Taxpayer believes that waiver of the penalties is warranted. The Department waived the penalty for 2007, but let the remaining years' penalties stand.

The Department refers to IC § 6-8.1-10-2.1(g), which states:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

In this case, the Department determined that Taxpayer did not file Indiana adjusted gross income tax returns for 2007-2012. The Department imposed penalty under IC § 6-8.1-10-2.1(g). As a result of the protest process, Taxpayer has not affirmatively established that it acted reasonably, as required by IC § 6-8.1-10-2.1(d) and [45 IAC 15-11-2\(b\)](#). The Department waived the penalty for 2007. The penalties for the tax years 2008-2012 will be not waived.

FINDING

Taxpayers' protest is denied.

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